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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110913585-1625-01]

RIN 0648-BB36

Atlantic Highly Migratory Species; 2012 Atlantic Shark  
Commercial Fishing Season

AGENCY: National Marine Fisheries Service (NMFS), National  
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would establish opening dates and adjust quotas for the 2012 fishing season for the Atlantic commercial shark fisheries. Quotas would be adjusted based on any over- and/or underharvests experienced during the 2010 and 2011 Atlantic commercial shark fishing seasons. In addition, NMFS proposes season openings based on previously implemented adaptive management measures to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas. The proposed measures could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic, including the Gulf of Mexico and

Caribbean.

DATES: Written comments will be accepted until [insert date 30 calendar days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by 0648-BB36, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal at <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter 0648-BB36 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line

- Mail: Submit written comments to 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope "Comments on the Proposed Rule to Establish Quotas and Opening Dates for the 2012 Atlantic Shark Commercial Fishing Season."

- Fax: 301-427-8503, Attn: Karyl Brewster-Geisz, Guy DuBeck, or Jennifer Cudney

- Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received,

documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments under the Magnuson-Stevens Act are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006

Consolidated HMS FMP and its amendments established, among other things, commercial quotas for species and species complexes, accounting measures for under- and overharvests for the shark fisheries, and adaptive management measures such as flexible opening dates for the fishing season and inseason adjustments to shark trip limits, which provide flexibility in management in the furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

#### Accounting for Under- and Overharvests

Consistent with § 635.27(b)(1)(i)(A), if the available non-sandbar Large Coastal Shark (LCS) quota in a particular region or in the research fishery is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the quota in that region or in the research fishery for the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of 5 years, in the specific region or research fishery where the overharvest occurred. If the available quota for sandbar sharks, blacknose sharks, non-blacknose SCS, blue sharks, porbeagle sharks, and pelagic sharks

(other than porbeagle or blue sharks) is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season quota or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of 5 years. If the blue shark quota is exceeded, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season quota or, depending on the level of overharvest(s), deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing years to a maximum of 5 years.

Consistent with § 635.27(b)(1)(i)(B), if an annual quota for sandbar sharks, blacknose sharks, non-blacknose Small Coastal Sharks (SCS), blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) is not exceeded, NMFS may adjust the annual quota, depending on the status of the stock or quota group. If the annual quota for non-sandbar LCS is not exceeded in either region or in the research fishery, NMFS may adjust the annual quota for that region or the research fishery for the following year, depending on the status of the stock or quota group. If the stock/complex (e.g., sandbar sharks, porbeagle sharks, non-sandbar LCS, blue sharks) or

specific species within a quota group (e.g., blacktip sharks within the non-sandbar LCS complex) is declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS will not adjust the following fishing year's quota for any underharvest, and the following fishing year's quota will be equal to the base annual quota (or the adjusted base quota for sandbar sharks and non-sandbar LCS) until December 31, 2012.

Recently, NMFS published new stock determinations for blacknose and sandbar sharks (76 FR 62331; October 7, 2011). The blacknose shark stock was split into regions with the Atlantic stock being determined as overfished with overfishing occurring, while the Gulf of Mexico stock status was determined to be unknown. Sandbar sharks have been determined to be overfished with no overfishing occurring. Porbeagle sharks have been determined to be overfished. Blue sharks and pelagic sharks (other than porbeagle or blue sharks) have an unknown stock status. NMFS recently determined that scalloped hammerhead sharks were overfished with overfishing occurring (76 FR 23794; April 28, 2011). Scalloped hammerhead sharks are included in the non-sandbar LCS complex for the Atlantic and Gulf of Mexico regions. As a result, based on their stock

status, no underharvests from the 2011 Atlantic commercial shark fishing season would be applied to the 2012 annual quotas or adjusted base quotas of these species or complexes.

Thus, the 2012 proposed quotas would be equal to the appropriate annual quota minus any overharvests that occurred in the 2010 and 2011 fishing seasons. For blacknose sharks, porbeagle sharks, blue sharks, and pelagic sharks (other than porbeagle or blue sharks), NMFS would use the base annual quota established at § 635.27(b)(1)(iv)(A). For sandbar sharks and non-sandbar LCS, NMFS would use the adjusted base annual quota established at § 635.27(b)(1)(iii).

The non-blacknose SCS complex has been determined to not be overfished and has no overfishing occurring; therefore, any underharvest up to 50 percent of the base quota from the 2011 Atlantic commercial shark fishing season could be applied to the 2012 annual quotas.

#### 2012 Proposed Quotas

This rule proposes adjustments to the base commercial quotas due to over and underharvests that occurred in 2010 and 2011, where allowable, taking into consideration the stock status as required under existing regulations. The proposed 2012 quotas by species and species group are summarized in Table

1.

The quotas in this proposed rule are based on dealer reports received as of August 31, 2011. In the final rule, NMFS will adjust the quotas based on dealer reports received as of October 31, 2010. Thus, all of the 2012 proposed quotas for the respective shark complexes/species are subject to further adjustment for any overharvests reflected after considering the October 31 dealer reports. All dealer reports that are received by NMFS after October 31, 2011, will be used to adjust the 2013 quotas, as appropriate.

Table 1. 2012 proposed quotas and opening dates for the Atlantic shark fisheries. All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. Table includes landings data through August 31, 2011, and quotas are subject to change based on landings through October 31, 2011.

Species Group	Region	2011 Annual Quota (A)	Preliminary 2011 Landings <sup>1</sup> (B)	Overharvest/ Underharvest (C)	2012 Base Annual Quota <sup>2</sup> (D)	2012 Proposed Quota (D+C)	Season Opening Dates
Non-Sandbar Large Coastal Sharks	Gulf of Mexico	351.9 (775,740 lb dw)	327.0 (720,868 lb dw)	2.3 <sup>3</sup> (5,167 lb dw)	390.5 (860,896 lb dw)	392.8 (866,063 lb dw)	March 1, 2011
	Atlantic	190.4 (419,756 lb dw)	79.9 (176,052 lb dw)	-4.6 <sup>4</sup> (-10,135 lb dw)	187.8 (414,024 lb dw)	183.2 (403,889 lb dw)	Effective Date for HMS Electronic Reporting System or July 15, 2011 <sup>7</sup>
Non-Sandbar LCS Research Quota	No regional quotas	37.5 (82,673 lb dw)	37.0 (81,627 lb dw)	-	37.5 (82,673 lb dw)	37.5 (82,673 lb dw)	On or about January 1, 2011
Sandbar Research Quota		87.9 (193,784 lb dw)	53.0 (116,706 lb dw)	-	87.9 (193,784 lb dw)	87.9 (193,784 lb dw)	
Non-Blacknose Small Coastal Sharks		314.4 (693,257 lb dw)	132.9 (292,926 lb dw)	89.0 <sup>5</sup> (196,148 lb dw)	221.6 (488,539 lb dw)	310.6 (684,687 lb dw)	

Blacknose Sharks		19.9 (43,872 lb dw)	13.1 (28,856 lb dw)	-	19.9 (43,872 lb dw)	19.9 (43,872 lb dw)	
Blue Sharks		273 (601,856 lb dw)	7.2 (15,968 lb dw)	-	273 (601,856 lb dw)	273 (601,856 lb dw)	
Porbeagle Sharks		1.6 (3,479 lb dw)	2.4 (5,350 lb dw)	-0.9 <sup>6</sup> (-2,083 lb dw)	1.7 (3,748 lb dw)	0.8 (1,665 lb dw)	
Pelagic Sharks Other Than Porbeagle or Blue		488 (1,075,856 lb dw)	85.7 (188,896 lb dw)	-	488 (1,075,856 lb dw)	488 (1,075,856 lb dw)	On or about January 1, 2011 <sup>8</sup>

<sup>1</sup> Landings are from January 1, 2011, until August 31, 2011, and are subject to change.

<sup>2</sup> 2010 annual base quotas for sandbar and non-sandbar LCS are the annual adjusted base quotas that are effective from July 24, 2008, until December 31, 2012 (50 CFR 635.27(b)(1)(iii) and (iv)).

<sup>3</sup> NMFS proposes to adjust the 2012 quota for the Gulf of Mexico non-sandbar LCS to account for the 2.3 mt dw that was over estimated in the landings report in 2011 after the final rule establishing the 2011 quota published.

<sup>4</sup> NMFS proposes to adjust the 2012 quota for Atlantic non-sandbar LCS to account for the 4.6 mt dw overharvest reflected in the landings report in 2011 after the final rule establishing the 2011 quota published.

<sup>5</sup> NMFS proposes to adjust the 2012 quota for non-blacknose SCS to account for the 21.8 mt dw that was over estimated in the landings report in 2011 after the final rule establishing the 2011 quota published and the underharvest of 110.8 mt dw in 2011.

<sup>6</sup> NMFS proposes to adjust the 2012 quota for porbeagle sharks to account for the <0.1 mt dw overharvest that occurred in 2010 after the 0.1 mt dw overharvest was accounted for in the final rule establishing the 2011 quota and additional overharvest of 0.8 mt dw in 2011.

<sup>7</sup> NMFS proposes to open the Atlantic non-sandbar LCS quota once the HMS electronic reporting system is implemented or July 15, 2011, whichever occurs first. NMFS would closely monitor the quota to ensure equitable fishing opportunities. If the fishery opens sooner than July 15 and

the quota is being taken too fast to ensure equitable fishing opportunities across the region, NMFS would reduce the Atlantic non-sandbar LCS retention limits to slow down the fishing rates.

<sup>8</sup> NMFS proposes to open the porbeagle fishery on January 1, 2012. If landings continue to occur in 2011 and the overharvest reaches 80 percent or more of the base quota (1.3 mt dw; 2,988 lb dw), NMFS would not open the fishery in 2012.

1. Proposed 2012 Quotas for Non-Sandbar LCS and Sandbar Sharks within the Shark Research Fishery

The 2012 proposed commercial quotas within the shark research fishery are 37.5 mt dw (82,673 lb dw) for non-sandbar LCS and 87.9 mt dw (193,784 lb dw) for sandbar sharks.

Within the shark research fishery, as of August 31, 2011, preliminary reported landings of non-sandbar LCS were at 99 percent (37.0 mt dw), and sandbar shark reported landings were at 60 percent (53.0 mt dw). Reported landings have not exceeded the 2010 quota to date. Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(1)(vii), NMFS is not proposing to reduce 2011 quotas in the shark research fishery based on any overharvests.

Under § 635.27(b)(1)(i), because individual species, complexes, or species within a complex have been determined to be either overfished, have overfishing occurring, overfished with overfishing occurring, or have an unknown status, underharvests for these species and/or complexes would not be applied to the 2012 quotas. Therefore, NMFS proposes 2012 quotas for non-sandbar LCS and sandbar sharks within the shark research fishery would be 37.5 mt dw (82,673 lb dw) and 87.9 mt dw (193,784 lb dw), respectively.

## 2. Proposed 2012 Quotas for the Non-sandbar LCS in the Gulf of Mexico Region

The 2012 proposed quota for non-sandbar LCS in the Gulf of Mexico region is 392.8 mt dw (866,063 lb dw). As of August 31, 2011, preliminary reported landings were at 93 percent (327.0 mt dw) for non-sandbar LCS in the Gulf of Mexico region. In the final rule establishing the 2011 quotas (75 FR 76302, December 8, 2010), NMFS accounted for an overharvest of non-sandbar LCS of 38.6 mt dw (85,156 lb dw) using data that was reported as of October 31, 2010. Between that date and December 31, 2010, the reported landings dropped by 2.3 mt dw due to normal quality control procedures that occur when updated data are supplied. Thus, in order to reflect the best available data and in accordance with § 635.27(b)(1)(i), the amount that was deducted from the 2011 annual quota, based on preliminary numbers that were later corrected, would be added to the proposed 2012 non-sandbar LCS quota in the Atlantic region. Thus, the 2012 proposed commercial non-sandbar LCS quota is 392.8 mt dw (866,063 lb dw) (390.5 mt dw annual base quota + 2.3 mt dw 2010 over estimated landings = 392.8 mt dw 2012 adjusted annual quota).

## 3. Proposed 2012 Quotas for the Non-Sandbar LCS in the Atlantic

## Region

The 2012 proposed quota for non-sandbar LCS in the Atlantic region is 183.2 mt dw (403,889 lb dw). As of August 31, 2011, preliminary reported landings were at 42 percent (79.9 mt dw) for non-sandbar LCS in the Atlantic region as the commercial season opened on July 15, 2011. In the final rule establishing the 2011 quotas, reported landings as of October 31, 2010, did not exceed the 2011 quota. Between that date and December 31, 2010, the Atlantic non-sandbar LCS quota was overharvested by 4.6 mt dw. As such, the 2012 proposed commercial non-sandbar LCS quota is 183.2 mt dw (403,889 lb dw) (187.8 mt dw annual base quota - 4.6 mt dw 2010 over estimated landings = 183.2 mt dw 2012 adjusted annual quota).

## 4. Proposed 2012 Quotas for SCS and Pelagic Sharks

The 2012 proposed annual commercial quotas for non-blacknose SCS, blacknose sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) are 310.6 mt dw (684,687 lb dw), 19.9 mt dw (43,872 lb dw), 273 mt dw (601,856 lb dw), 0.8 mt dw (1,900 lb dw), and 488 mt dw (1,075,856 lb dw), respectively.

As of August 31, 2011, preliminary reported landings of non-blacknose SCS, blacknose sharks, blue sharks, porbeagle

sharks, and pelagic sharks (other than porbeagle and blue sharks) were at 42 percent (132.9 mt dw), 66 percent (13.1 mt dw), 2 percent (7.2 mt dw), 154 percent (2.4 mt dw), and 18 percent (85.7 mt dw), respectively. As described above, while NMFS may adjust quotas for underharvests only when allowable depending on the stock status, NMFS will always adjust quotas for overharvests.

Non-blacknose SCS have not been declared to be overfished, to have overfishing occurring, or to have an unknown status. Pursuant to § 635.27(b)(1)(i), any underharvests for the non-blacknose SCS would be applied to the 2011 quotas. In the final rule establishing the 2011 quotas, NMFS accounted for an underharvest of 92.9 mt dw (204,718 lb dw) using data that was reported as of October 31, 2010. Between that date and December 31, 2010, an additional 21.8 mt dw was reported landed. As such, NMFS proposes to reduce the 2012 non-blacknose SCS to accommodate for the reported landings in 2010 and underharvest in 2011. The proposed 2012 adjusted base annual quota for non-blacknose SCS is 310.6 mt dw (684,687 lb dw) (221.6 mt dw annual base quota - 21.8 mt dw 2010 additional reported landings + 110.8 mt dw 2011 underharvest = 310.8 mt dw 2012 adjusted annual quota).

Porbeagle sharks have been declared to be overfished with overfishing occurring. Pursuant to § 635.27(b)(1)(i), any overharvests of porbeagle sharks would be applied to the 2012 quotas. In the final rule establishing the 2011 quotas, NMFS accounted for an overharvest of porbeagle sharks of 0.1 mt dw (269 lb dw) using data that was reported as of October 31, 2010. Between that date and December 31, 2010, porbeagle sharks were overharvested by an additional 0.1 mt dw (212 lb dw). As of August 31, 2011, an additional 0.8 mt dw (1,871 lb dw) was overharvested above the porbeagle shark quota. The proposed 2012 adjusted annual commercial porbeagle quota is 0.8 mt dw (1,665 lb dw) (1.7 mt dw annual base quota - 0.1 mt dw 2010 overharvest - 0.8 mt dw 201 overharvest = 0.8 mt dw 2012 adjusted annual quota).

Blacknose sharks and other pelagic species are considered overfished, to have overfishing occurring, or to have an unknown status. As of August 31, 2011, the 2011 commercial quota had not been reached or exceeded. Therefore, the 2012 proposed quotas would be the base annual quotas for blacknose sharks, blue sharks, and pelagic sharks (other than blue and porbeagle sharks) (19.9 mt dw (43,872 lb dw), 273 mt dw (601,856 lb dw), and 488 mt dw (1,075,856 lb dw), respectively.

Proposed Fishing Season Notification for the 2012 Atlantic  
Commercial Shark Fishing Season

For each fishery, NMFS considered the seven "Opening Fishing Season" criteria listed in § 635.27(b)(1)(ii). These include: "(A) The available annual quotas for the current fishing season for the different species/complexes based on any over- and/or underharvests experienced during the previous commercial shark fishing seasons; (B) Estimated season length based on available quota(s) and average weekly catch rates of different species/complexes in the Atlantic and Gulf of Mexico regions from the previous years; (C) Length of the season for the different species/complexes in the previous years and whether fishermen were able to participate in the fishery in those years; (D) Variations in seasonal distribution, abundance, or migratory patterns of the different species/complexes based on scientific and fishery information; (E) Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species/complexes quotas; (F) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; and/or, (G) Effects of a delayed opening with regard to fishing opportunities in other

fisheries." In addition, NMFS also considered other relevant factors, such as general input from the public and management measures before arriving at a proposed opening date for this rulemaking. For more information on these criteria and how they are considered, please review the Environmental Assessment (EA) associated with the 2011 quota specifications rule (75 FR 76302; December 8, 2010).

NMFS proposes that the 2012 Atlantic commercial shark fishing season for the shark research, non-blacknose SCS, blacknose sharks, blue sharks, and pelagic sharks (other than porbeagle and blue sharks) in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, would open on or about January 1, 2012.

NMFS also proposes opening the porbeagle fishery on January 1. However, the 2011 porbeagle fishery landings exceeded the 2011 quota by 54 percent and late reported landings in December 2010 that must be accounted for in 2012. Due to the combined overharvest in 2010 and 2011 for the porbeagle fishery, the porbeagle quota is expected to be 0.8 mt dw (1,665 lb dw). Although the porbeagle fishery closed on August 29, 2011 (76 FR 53343), additional landings could be reported late and fishermen might mistakenly land porbeagle sharks. If overharvest

continues to occur and the level reaches 60 percent or more of the 2012 base quota (1.3 mt dw; 2,988 lb dw), then NMFS would not open the fishery in 2012. This decision is based on the availability of the annual quota based on overharvests in the previous fishing seasons (§ 635.27(b)(1)(ii)(A)).

NMFS proposes to open the Gulf of Mexico non-sandbar LCS fishery on March 1, 2012. Opening the fishing season again on March 1 would provide, to the extent practicable, equitable opportunities across the fisheries management region as it did for the 2011 fishing season. This is consistent with all the criteria listed in § 635.27(b)(1)(ii), but particularly the effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species/complexes quotas (§ 635.27(b)(1)(ii)(E)). In the Atlantic region, NMFS delayed the opening of the non-sandbar LCS fishery until July 15 in 2010 and 2011 in order to allow for more equitably distributed shark fishing opportunities as intended by Amendment 2. However, based on public comments received during the rulemaking process for the 2011 season, including from south Atlantic fishermen, NMFS proposes to open the Atlantic non-sandbar LCS fishery on the effective date of

the final rule implementing the Atlantic HMS electronic dealer reporting system (76 FR 37750) or July 15, 2011, whichever occurs first. This opening date is also consistent with all the criteria listed in § 635.27(b)(1)(ii), particularly the variations in seasonal distribution, abundance, or migratory patterns of the different species based on scientific and fishery information (§ 635.27(b)(1)(ii)(D)). The proposed opening date could allow fishermen to harvest some of the 2012 quota at the beginning of the year when sharks are more prevalent in the South Atlantic area if the electronic dealer reporting system is operating earlier than July 15. If the season opens before July 15 and the quota is taken too quickly to allow fishermen in the North Atlantic area an opportunity to fish throughout the entire region, then NMFS could reduce the commercial retention limits per § 635.24(a)(8) while being consistent with the opening dates criteria. If that occurs, NMFS would file for publication with the Office of the Federal Register a notice of any inseason adjustments to reduce retention limits to between 0-33 sharks per trip. NMFS could increase the commercial retention limits back to 33 sharks per trip at a later date to provide fishermen in the North Atlantic area an opportunity to retain non-sandbar LCS. Based on the

fishing rates in the 2009 fishing season, if NMFS opens the fishery earlier than July 15 and does not adjust the commercial retention limits throughout the season, then fishermen in the South Atlantic area would likely catch the entire Atlantic quota before the sharks could migrate to the North Atlantic area.

All of the shark fisheries would remain open until December 31, 2012, unless NMFS determines that the fishing season landings for sandbar shark, non-sandbar LCS, blacknose sharks, non-blacknose SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) have reached, or are projected to reach, 80 percent of the available quota. At that time, consistent with § 635.28(b)(1), NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species group and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the Federal Register, that additional quota is available, the fishery for the shark species group and, for non-sandbar LCS, region would remain closed, even across fishing years, consistent with § 635.28(b)(2).

#### Request for Comments

Comments on this proposed rule may be submitted via

<http://www.regulations.gov>, mail, or fax. NMFS solicits comments on this proposed rule by [insert date 30 days after date of publication in the FEDERAL REGISTER] (see DATES and ADDRESSES) .

#### Public Hearings

Public hearings on this proposed rule are not currently scheduled. If you would like to request a public hearing, please contact Guy DuBeck, Jennifer Cudney or Karyl Brewster-Geisz by phone at 301-427-8503.

#### Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the

legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. The IRFA analysis follows.

In compliance with section 603(b)(1) of the RFA, the purpose of this proposed rulemaking is, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to adjust the 2012 proposed quotas for non-sandbar LCS, sandbar sharks, blacknose sharks, non-blacknose SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) based on any over- and/or underharvests from the previous fishing year. These adjustments are being implemented according to the regulations implementing the 2006 Consolidated HMS FMP and its amendments. Thus, NMFS would expect few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated HMS FMP and its amendments, based on the quota adjustments. An additional purpose is to use implemented management measures to delay the opening of the fishing season and allow inseason adjustments in the trip limits to slow the fishery down during the season, as necessary. These management measures would provide, to the extent practicable, equitable opportunities across the fishing management region while also considering the ecological needs of

the different species.

In compliance with section 603(b)(2) of the RFA, the objectives of this proposed rulemaking are to: (1) adjust the annual quotas for non-sandbar LCS in the Gulf of Mexico due to over-estimated landings in 2010, non-sandbar LCS in the Atlantic region due to minor overharvests in 2010, porbeagle sharks due to overharvests in 2010 and 2011, and the non-blacknose SCS due to under estimated landings in 2010 and underharvests in 2011; (2) establish the opening dates for all of the shark fisheries in the Atlantic and Gulf of Mexico regions; and, (3) consider the need to adjust the trip limits inseason for non-sandbar LCS.

Section 603(b)(3) requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS considers all HMS permit holders to be small entities because they either had average annual receipts less than \$4.0 million for fish-harvesting, average annual receipts less than \$6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in this industry.

The commercial shark fisheries are comprised of fishermen

who hold shark directed or incidental limited access permits (LAP) and the related industries, including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities according to the size standards set by the SBA. The proposed rule would apply to the approximately 216 directed commercial shark permit holders, 264 incidental commercial shark permit holders, and 114 commercial shark dealers as of August 2011.

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603 (b)(4)). Similarly, this proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act.

In compliance with section 603(c) of the Regulatory Flexibility Act, each initial regulatory flexibility analysis

shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Additionally, the Regulatory Flexibility Act (5 U.S.C. § 603 (c) (1)-(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities. In order to meet the objectives of this final rule, consistent with the Magnuson-Stevens Act and the Endangered Species Act (ESA), NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the

Magnuson-Stevens Act. This rulemaking does not establish management measures to be implemented, but rather implements previously adopted and analyzed measures with adjustments, as specified in Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP and the EA with the 2011 quota specifications rule (75 FR 76302; December 8, 2010). Thus, in this proposed rulemaking HMS proposes to adjust quotas established and analyzed in Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP by subtracting the underharvest or adding the overharvest. Similarly, the ranges of management measures are consistent with the requirements of the Magnuson-Stevens Act that were previously analyzed in the EA with the 2011 quota specifications rule. Thus, HMS has limited flexibility that it could exercise on the management measures or quotas in this rule.

Based on the 2010 ex-vessel price (\$0.67/LCS lb, \$0.68/SCS lb, \$1.21/pelagic lb, and \$13.48/lb for shark fins), the 2012 Atlantic shark commercial baseline quotas could result in revenues of \$5,973,806. The adjustments due to over-estimated landings for 2010 would result in a \$6,944 gain in revenues in the Gulf of Mexico non-sandbar LCS fishery. The adjustment due to the overharvests in 2011 would result in a \$13,621 loss in

revenues in the Atlantic non-sandbar LCS fishery and a \$3,924 loss in revenue in the porbeagle fishery. The adjustment due to the underharvests in 2011 would result in a \$265,584 gain in revenues in the non-blacknose SCS fishery. These revenues are similar to the gross revenues analyzed in Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP. The IRFAs for those amendments concluded that the economic impacts on these small entities, resulting from rules such as this one that delay the season openings and adjust the trip limits inseason via proposed and final rulemaking, were expected to be minimal. Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP and the EA with the 2011 quota specifications rule assumed we would be doing annual rulemakings and considered the IRFAs in the economic and other analyses at the time.

For this rule, NMFS reviewed the criterion at § 635.27(b)(ii) to determine when opening each fishery will provide equitable opportunities for fishermen while also considering the ecological needs of the different species. The opening of the fishing season could vary based on the available annual quota, catch rates, and number of fishing participants during the year. For the 2012 fishing season, NMFS is proposing to open the shark research, blacknose shark, non-blacknose SCS,

and pelagic shark fisheries on the effective date of the final rule for this action (expected to be January 1). The direct and indirect economic impacts would be neutral on a short- and long-term basis, because NMFS is proposing not to change the opening dates of these fisheries from the status quo.

NMFS also proposes opening the porbeagle fishery on January 1. The direct and indirect economic impacts would be neutral on a short- and long-term basis, because NMFS is proposing not to change the opening dates of these fisheries from the status quo. However, due to the combined overharvest in 2010 and 2011 for the porbeagle fishery, the porbeagle quota is expected to be 0.8 mt dw (1,665 lbs dw). If landings continue to occur and the overharvest reaches 80 percent or more of the base quota (1.3 mt dw; 2,988 lb dw), NMFS would not open the fishery. This action would cause direct and indirect moderate, adverse economic impacts on shark fishermen and other entities that rely on porbeagle sharks.

NMFS proposes to delay the opening of the non-sandbar LCS in the Gulf of Mexico region until March 1, 2011, which would be the same opening date as 2010 fishing season. The delay in the Gulf of Mexico non-sandbar LCS fishing season could result in short-term direct, minor, adverse economic impacts as fishermen

would have to fish in other fisheries to make up for lost non-sandbar LCS revenues during January and February of the 2012 fishing season. The short-term effects for delaying the season could cause indirect, minor, adverse economic impacts on shark dealers and other entities that deal with shark products as they may have to diversify during the beginning of the season when non-sandbar LCS shark products would not be available. However, long-term direct and indirect impacts are not anticipated as the delay would only be two months for the 2012 fishing season. In addition, NMFS does not anticipate that the delay would result in changes in ex-vessel prices as 2010 median ex-vessel prices for non-sandbar LCS meat and fins in the Gulf of Mexico region ranged from \$0.36-\$0.40/lb dw and \$17.67 to \$15.46/lb dw, respectively, from January through March.

NMFS proposes to delay the opening of the non-sandbar LCS in the Atlantic region until the effective date of the HMS electronic reporting system (approximately February 2012). The delay in the Atlantic non-sandbar LCS fishing season would result in short-term, direct, moderate, beneficial economic impacts as fishermen and dealers in the south Atlantic would not be able to fish for non-sandbar LCS starting in January but should still be able to fish earlier in the 2012 fishing season

compared to the 2010 and 2011 fishing season, which did not start until July 15. South Atlantic fishermen commented during the public comment period for the 2011 shark specification rulemaking process that they felt that opening the fishery in July was not fair to them because by July the sharks have migrated north and are no longer available. With the implementation of the HMS electronic reporting system, NMFS should be able to monitor the quota on a real-time basis. This ability, along with the inseason adjustment criteria in § 635.24(a)(8), should allow NMFS the flexibility in furtherance of opportunities for all fishermen in all regions, to the extent practicable. Depending on how quickly the quota was being harvested, NMFS could reduce the retention limits to 0-33 sharks per trip to ensure that fishermen further north have ample quota for a fishery later in the 2012 fishing season. The direct impacts to shark fishermen in the Atlantic region of reducing the trip limit would depend on the needed reduction in the trip limit and the timing of such a reduction. Therefore, such a reduction in the trip limit is only anticipated to have minor adverse direct economic impacts to fishermen in the short-term; long-term impacts are not anticipated as these reductions would not be permanent.

In the North Atlantic area, a split opening for the non-sandbar LCS would have direct, minor, beneficial economic impacts in the short-term for fishermen as they would have access to the non-sandbar LCS quota in 2012. Fishermen in the North Atlantic area did not have or had limited access to the non-sandbar LCS quota in 2009. There would be indirect, minor, beneficial economic impacts in the short and long-term for shark dealers and other entities that deal with shark products in this area as they would also have access to non-sandbar LCS products in 2011. Thus, allowing the split season in 2012 would cause neutral cumulative economic impacts, since it would allow for a more equitable distribution of the quotas among constituents in this region, which was the original intent of Amendment 2.

Authority: 16 U.S.C. 971 et seq.; 16 U.S.C. 1801 et seq.

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